

*Approved Minutes
South Florida Ecosystem Restoration
Working Group Meeting
Tallahassee, Florida
March 4, 2002*

Welcome and Introductions

Col May called the meeting to order at 12:30 p.m. The agenda (Encl. 1) was ratified.

Working Group Members	March 4	March 5	Alternates
Chuck Aller - FL Dept of Agriculture and Consumer Services	-	-	
Ernie Barnett - FL Dept of Environmental Protection	√	√	
Best, Ronnie - U.S.G.S.	√	√	
Bradford, Mark - Bureau of Indian Affairs			
Brad Brown - NOAA, National Marine Fisheries Service	-	-	Essie Duffie
Billy Causey - NOAA, FL Keys Nat'l Marine Sanctuary			
Kathy Copeland - South Florida Water Management District	√	-	Joan Lawrence
Wayne Daltry - Southwest FL Regional Planning Council	√		
Frank Duke - Palm Beach County Planning			
Gene Duncan - Miccosukee Tribe of Indians of FL			
Maureen Finnerty - National Park Service	√	√	
Dade County DERM (alternate)			
George Hadley - U.S. Dept of Transportation			
Thaddeus Hamilton - U.S. Department of Agriculture	√	√	
Richard Harvey - Environmental Protection Agency	√	√	
Ronald Jones - Southeast Environmental Research Center	√	√	
Barbara Junge - U.S. Attorney's Office	√	√	
Neal McAliley - U.S. Dept. of Justice	√	√	
COL Greg May - U.S. Army Corps of Engineers	√	√	
Ken Metcalf - Department of Community Affairs	-	-	Ann Lazar Day 1 Brenda Menendez Day 2
Peter Ortnor - NOAA			
Donna Pope - FL Dept. of Transportation			
Fred Rapach - Palm Beach County Water Utilities Dept	√	√	
Terry Rice - Miccosukee Tribe of Indians of Florida	√	√	
Jay Slack - U.S. Fish and Wildlife Service	-	-	Tom Grahl
Rick Smith - Office of the Governor of Florida	√	√	
Ron Smola - U.S. Department of Agriculture	-	-	Dave Legg
Steve Somerville - Broward County Department of Natural Resource Protection	√	√	
Craig Tepper, Seminole Tribe of Florida	-	-	Beth Carlson
Joe Walsh - Florida Fish and Wildlife Conservation Commission	√	√	
Julio Fanjul, Special Advisor	√	√	
Rock Salt, Special Advisor	-	√	Kevin Burger Day 1

Report on Water Projects and Initiatives

Dennis Duke presented information on the Florida Keys Carrying Capacity Study and the ISOP (Encl. 2). The draft Florida Keys Carrying Capacity Study is scheduled for release on March 5th. Public comments have been received on the ISOP which will result in changes to operations at the S-12 structures, accelerated construction of the C-111 project, two new pump stations and changes in water management in this area. The COE and DOI are working with the SFWMD on a land swap for the buffer area for the C-111 project and a temporary connector will be built to serve that function. The final IOP will be released in March with Public comment to be taken in April. Record of Decision should be released in May. NEPA document being prepared to address pump operations and potential WCA-3S discharges for S-356. The Corps expects to complete modeling for this area with operational features to be completed in July. The future CSOP will be a combined structural and operational plan crafted with all the partners at the table. COL May discussed the Corps' response to the Jeopardy Opinion. Neal McAliley asked about the movement of water in Miami-Dade County and whether the plan would deal with the land immediately adjacent to the park and the L-31. Dennis Duke responded that the intent is not to deal with storm water except in major storm conditions. Several groups have expressed a big concern about the operation of S-

356 and the potential for pumping into WCA 3-B. Without modified water deliveries, the operation will only capture the seepage.

Programmatic Regulations

Stu Appelbaum presented the Programmatic Regulations update (Encl. 3). The schedule includes submitting the regulations to OMB for review by April 1st. It will be published in the Federal Register by May 10th and public comment will close on July 10th. The final rule will be submitted to OMB by November 1 and concurrence will be needed by December 1. The final rule will be published on December 10. The Corps released the initial draft on December 28th and public comment has been solicited through several stakeholder meetings and the WRAC Programmatic Regulations subcommittee meetings. There was a meeting with the Senate EPW staff before the February 15 deadline for comment. All comments received have been posted on the evergladesplan.org website. Stu Appelbaum summarized the comments on areas of concern from the various stakeholders.

Common areas of concern:

- Protocols
- Role of RECOVER
- Assuring that water reservation remain in effect
- Variations from the predicted availability of water
- NEPA categorical exclusions
- Saving clause implementation and the definitions of legal sources of water, etc.
- Interim goals

Next steps include making the revisions to the initial draft. Additional WRAC subcommittee meetings will be held. The Task Force will be briefed at the March meeting prior to the submission of the proposed rule to OMB on April 1st. Peter Ortner asked how the Corps planned to respond to concerns raised through the public comment process. Stu Appelbaum said the initial draft process has been very useful in identifying issues and he is actively responding to those issues. COL May said that there are several areas with the CERP process where there is a framework for the process but all the answers are not yet known, i.e. PIRs. Fred Rapach said the role of the Task Force is another common concern and suggested this group discuss the possible role of the Task Force. There have also been discussions that the Task Force may be concerned with the role of RECOVER in the Programmatic Regulations. COL May stated that WRDA said the primary role of the Task Force is to provide recommendations to Secretary of the Army in implementing the Plan as well as to resolve conflicts as the Plan is being implemented. Fred Rapach said that with the March Task Force meeting fast approaching, the Working Group should provide some guidance to the Task Force and discuss whether there is some flexibility in the law on the role of the Task Force. **Action: The Working Group should discuss the possible role of the Task Force in the Programmatic Regulations.**

State Water Law

John Fumero (General Counsel, SFWMD) presented a Power Point presentation (Encl. 4) outlining the statutory framework for state water law in Florida. He also presented a white paper: Overview of Florida Water Law and Environmental Water Supply Assurance mechanisms (Encl. 5). The paper provides the history of Florida water law and the mechanism for reserving water for CERP. On March 13th, the SFWMD Governing Board will devote a day to the reservation issue. Florida Water Resources Act of 1972—Chapter 373 implemented a model water code that blends eastern and western water that employs a reasonable-beneficial use system to determine permits. Florida water law has several tools addressing protection of water for natural systems and consumptive uses, regulation of consumptive uses to prevent harm to the natural system, establishment of water reservations to protect fish and wildlife and establishment of minimum flows and levels to prevent significant harm to water resources during droughts.

Florida water law defines existing legal users as a permitted user. Existing legal users are defined as all water users required to get a permit or to be exempt from permitting like domestic use. The term “existing legal source” is different from the definition of legal use in Chapter 373. Under Florida law, the right to use water is not a property right. The right to use water defined by a permit is for a finite duration of time

and permits expire. Upon expiration, the user must re-establish their right based on updated conditions for issuance. Conditions for permit issuance are designed to protect water resources from harm due to drought condition, these include minimum flows and levels and water reservations.

The discussion of existing legal sources and the water made available by CERP centers on what assurance the SFWMD can give that the water reserved will not be permitted away for consumptive use permits. WRDA 2000 requires the WMD to reserve the water that will be made available by CERP. They must reserve the water and define the existing water delivered by the C&SF project to determine the baseline water. It will be important to define baseline water and new CERP water. Existing legal sources are protected through the Savings Clause. Wayne Daltry said the consumptive use permits are for 5 years and will have to be renewed and asked whether the permit would be assessed as to whether it helps meet minimum flows and levels when it comes in for renewal. John responded that WRDA did go beyond state law in this section. Fred Rapach asked whether CERP captures all the water in the system or is there other water available for consumptive use permits. John stated that CERP cannot capture all the water available and added that when an applicant comes in for a permit; they have to demonstrate that the water is available. The requirements for a consumptive use permit are: 1) is it a reasonable demand and a need for the water e.g. public water supply; 2) is it an efficient non-wasteful use; 3) is the water currently available and not otherwise permitted; and 4) will the use not cause harm to other water resources e.g. aquifers. Permit duration gives the user certainty of water availability and any impact to that use is protected for the duration of the permit. Flexibility is built into the system as the periodic renewal provides an opportunity to re-examine the use. The WMD has the ability to issue 20-year permits, but the applicant must provide reasonable assurances that the permit will not impact fish and wildlife, the aquifer, etc for 20-years. But with LEC and CERP, no applicant can meet that standard.

Reservation for the natural system has been done only once in Florida by the St. John's Water Management District for Paine's Prairie. The process identifies water for protection of fish and wildlife and public health and safety. The reservation is used as a condition for permit issuance which caps water available for allocations to consumptive use from source. Water for the natural system is to be reserved under Florida Law prior to project construction and the process must be adopted by rule. Richard Harvey stated that "public health and safety" really doesn't address water quality. John Fumero disagreed stating the WMD has provisions under 373 that allows for review of the water quality impact of the permit. Neal McAilley asked if reservation of water is linked to only consumptive use and whether there is non-consumptive use permits granted by the WMD. John Fumero said that the reservation statute should include any reservation that would impact water use. The state CERP bill said that during the PIR process when quantifying the water needed for a project, the WMD must examine the impact of that water reservation. The District needs to clarify the scope of the reservations. Fred Rapach noted the state reserves water for fish and wildlife and restoration and asked if the reservation would be done during the PIR process. John Fumero said once modeling is done, the rule would be set for reserving that water. Fred Rapach asked how the state would consider the impact of the reservations on the existing legal users and uses. John replied that WRDA clearly stated there could be no impact. Janet Llewellyn added that when a reservation is set under state law, the impact to existing users and uses must be considered. Fred Rapach asked how the state would consider the impact of the reservation to those legal users. Janet Llewellyn responded that the reservation being set would have to account for the water needed for the CERP project and account for the current uses of that water. Mr. Fumero noted that WRDA states there must be a reservation before you sign a PCA and future water can be reserved based on the model.

Beth Carlson asked whether the WMD will reserve water in the baseline or as the projects come on line. John Fumero responded that technical folks are still grappling with quantifying the water available for the natural system on a regional basis. There are waters used now to manage saltwater intrusion in Broward County, this isn't quantified in a permit and will be discussed at the March 13th Governing Board workshop. John Fumero explained that Florida water law requires equitable management of the resource during drought and the question of how to manage water during a drought remains to be answered. The WMD is committed to shared-adversity and there is a concern that the environment will get short changed when there is a drought. Florida water law requires planning to identify water supply shortfalls and if necessary construction of alternative water supply projects to assure adequate supply for both humans and the environment. There are requirements for the WMD to develop 20-year water supply plans. Rick Smith

said this planning requirement could be refined to require local governments to use this information in their growth management planning. Under state law, the WMD is required to participate in the development of the Restudy project components to ensure the component meets all legal responsibilities under Chapter 373.

Wayne Daltry asked whether there was any proposal in the state legislature to move Florida's water law towards a western state water law. John Fumero said the user community is concerned about the potential impact to their rights through CERP and other environmental protection initiatives. There has been a movement for a longer duration permit, but not as a property right. Wayne then asked if there has been any movement to allow existing users to change their uses without agency review and approval. John responded no. Beth Carlson expressed concern about water allocation in the interim period before a CERP project comes on line and asked if there is a possibility that an existing permitted amount of water could be reduced. John Fumero explained that WRDA deals with this, but the water in question is the currently non-permitted water that could be reserved. Neal McAliley stated that there are two types of permits consumptive use and non-consumptive use (environmental resource permits) and asked about the ERP review. COL May said the Corps needs water quality certification for its projects and this is granted through the ERP process. John Fumero explained that DEP issues the ERP to the WMD. Neal said the question has been asked for years whether the feds need ERP permits. COL May explained that the process is for federal projects to go through the ERP process, the review takes place whether called it is an ERP or a water quality certification.

COL May asked about existing uses and how the WMD discerns between the amount of water a permittee is entitled to and how much the user actually uses. John Fumero said that if the review is done correctly, the user gets only what they need. The improved modeling capability of the WMD is allowing better identification of this number. As a practical matter, the permitted number would be used. Permits are generally granted for 5-10 years. Ronnie Best asked how the WMD makes it's population projection and what would happen if the projected growth exceeded the real growth that a permit is based on. John Fumero explained the WMD uses the University of Florida projections. Rick Smith pointed out that if S.B. 1182 passes, local governments will be asked to use water supply plans in their comprehensive plan amendment deliberation.

Terry Rice asked how the District would allocate water in a drought year and accommodate the needs of natural system. John Fumero stated the 31-year rainfall data would be used to analyze the water needs and the cup reflects the one in 10 year needs and the water shortage management rules come into effect if it is worse. Terry Rice added that it is difficult to quantify the amount of water needed by the natural system in a drought and asked for a hypothetical project. John Fumero said the March 13 presentation on the volume duration curve by Ken Ammon would explain this. Janet Llewellyn it is expected for the natural system to experience the one in 10. However, don't want the cup pressures to impose conditions that have the environment experience a one in 30 year drought. Terry Rice asked whether there would be a "basement" of what the environment needs and added that he did not see how a reservation would be made for the natural environment since the only way water can be allocated is through operations. John Fumero replied that reservation would be allocated through operational decisions, which are rainfall driven decisions based on actual hydrological conditions, not projections. The Programmatic Regulations require the operational manual to be developed in tandem with the PIR. Terry Rice asked if the goal is to tie reservation to the operation rule, why not make the operating rule the reservation.

John Fumero responded that the Corps' Operating Manuals would include the WMD water shortage plan as an appendix. Terry Rice said the goal is to capture water so more water is available to meet the needs of people and the environment and avoid competition. COL May said the difficulty would be in how to manage it during the interim before CERP is built. Mr. Fumero said that most consumptive use permits come up for renewal in 2004 and 2005. Neal McAliley suggested the amount of water allocated through consumptive use permits might pale compared to the water lost due to flood protection. John Fumero stated that is correct, but CERP means more storage so ultimately less water lost to the system.

Neal McAliley pointed out that the Florida Keys Aqueduct authority has asked for an increased consumptive use based on population projections and the source of their water is east of ENP. Currently violating MFL in that area, so perhaps they can't get that level of a permit, but water that is lost to the

system through flood protection is not accounted for in the same way. There needs to be a legal system to integrate the flood protection water with the cup water and a coherent legal regime on who gets to use water and when. Fred Rapach asked whether the WMD have a legal responsibility to implement the water supply plans during the interim period. John Fumero responded that DEP reviews the WMD activities through the water supply planning process. Janet Llewellyn said for example, the LEC statute requires a list of water resource projects and utility water supply projects and the total to meet the needs of the system over the next 20 years. The accountability is through the 5-year SFWMD plan to fund these projects. Fred Rapach suggested that during the interim period, the plan be strengthened so these water supply projects are built. If local governments are bound by their comprehensive plans, the SFWMD should be bound by their water supply plans. Janet Llewellyn said that beyond the legal requirement to implement CERP, there is not a legal requirement to implement the water supply plans and the priorities are limited by funding.

Litigation Update

Neal McAiley provided a status update on several federal cases: 1) NPCS vs. Norton alleges the NPS settlement with occupants amounts to leasing. The District Judge dismissed these charges and it is under appeal. 2) Miccosukee vs. the Corps says the ISOP plan was improperly implemented under statutes. The Magistrate issued an opinion that the Corps improperly implemented the ISOP and the magistrate said that the Corps should prepare a FONSI. The Magistrate recommended that all other non-Miccosukee tribe be dismissed due to lack of standing and the District Judge agreed. 3) The Corps authority to purchase land in the 8.5 square mile area has been challenged. 4) National Wildlife Foundations vs. Norton, the merits are being briefed now and at issue is the use of off road vehicles. 5) The water quality case may be back in court soon and 6) Miccosukee vs. SFWMD (S-9 case) challenges discharges from the pump into WCA 3A. The tribe asserts that the WMD needs a NEPDES permit under the Clean Water Act (CWA). The 11th Circuit Court of Appeals ruled for the Miccosukee and all structures will now be subject to a two-part test to determine if the structure introduced pollutants into a receiving water body and whether the waters would have gone there anyway without the structure. Implications are significant as it applies to all structures in the C&SF system. COL May asked whether a permit would still be needed if the state is meeting its water quality standards. Neal McAiley explained that the two-part test was very fact intensive. He added that all water has pollutants in it and you need the definition of the pollutant under the CWA. It is very broad and can even be defined as a difference of water temperature. Richard Harvey suggested the SFWMD and the Corps to lead a discussion on water quality with DEP and EPA on what CERP will or will not do for water quality. He added that his staff would be happy to discuss the definition of pollutant under the CWA. Neal McAiley said that the issue of water quality would re-emerge as a high priority due to the ERC setting the 10 ppb threshold for phosphorus in the Everglades. **Follow-up: Working Group will schedule a discussion on water quality with the SFWMD, COE, DEP and EPA on what CERP will or will not do for water quality. EPA will discuss the definition of pollutant under the CWA.**

David Crowley (DEP, Office of General Counsel) provided an update on state litigation. The pre-litigation front is stormy i.e., rulemaking to adopt phosphorus criteria. DEP proposed the phosphorus criteria of 10 ppb and placeholder language to keep the option open for the ERC to put a compliance technology as part of the rule. The ERC has decided to have a series of hearings for stakeholders to voice their positions. The agricultural interests have filed a "lower cost alternative" which DEP must review under the statute's requirement of implementing the rule in a cost-effective manner. Initial review leads staff to view this proposal as not meeting the statutory intent. DEP has an October timeline for the final rule. Fred Rapach asked where the final phosphorus boundaries were. David explained the Everglades Protection Area is the Refuge, WCA 2 & 3 and ENP. The EFA requires DEP to examine the EAA canals and examine the uses and quality of that water. Richard Harvey added that DEP does not have the final say on the phosphorus criteria and DEP must submit that number to EPA for review and approval under the CWA. EPA is working closely with DEP to insure that what is submitted is consistent with the CWA. Terry Rice asked if there could be a two-tiered criteria. Richard Harvey responded that it is possible, but there are permit issues in severely degraded areas and it limits what you can do to improve water quality through the permit process.

David Crowley said the ERC needs a thorough review of the legal issues associated with this action under the EFA, i.e., the federal settlement agreement and other considerations that constrain their actions. The bifurcated standard discussion is the idea of a different number in the impacted area vs. the pristine areas.

DEP does not support this at this time and the ERC was informed that this idea might face a significant legal challenge. Terry Rice asked whether the discharge would have to be the same as the ambient discharge and where would this be measured. David Crowley said that a part of that question is whether any relief mechanism is available under the EFA i.e., mixing zones, variance or other strategies available under state law. Richard Harvey said the number would apply at the point of discharge unless there is a bifurcated standard unless a case can be made that you could not meet the standard and you would then have to look at alternative treatment technology. There could be a variance for technical or economic reasons until the problem is solved. This translates into an NEPDES permit, which is where you get a variance. Joe Walsh reported that the CERP Water Quality Feasibility Study just came out and the team would welcome this timely input.

Land Acquisition Plan Update

Greg Brock (Executive Director of the ARC, DEP Division of State Lands) provided an update on the status of land acquisition. He explained that in 1986, Southern Golden Gates Estates was established as a SOR project. There was a settlement agreement put into place to facilitate acquisition from the numerous landowners. The property is 40,000 acres with 30,000 property owners and the state has acquired 29,000 acres at a cost of \$58 million to assist the hydrological restoration of the Ten Thousand Islands. Partners are the SFWMD, Corps, Seminoles and Miccosukee Tribe. Phase 1 of Fisheating Creek, a tributary of Lake Okeechobee is another project. The private property owner (Lykes) must manage the nature easement areas while retaining the lands in a natural condition. For Phase 2, the plan is to flood lands adjacent to the canal. The Babcock tract has also been acquired in this area with over 30,000 acres being purchased at a cost of over \$74 million for the East Coast Buffer. Dr. Brock also spoke about lands acquired in St. Lucie County for a CERP project.

John Outland introduced Jim Muller, a contractor, to discuss the Land Acquisition Strategy. He provided a joint project map and associated tables (not posted due to size limitations) to members of the Working Group. He presented a power point presentation (Encl. 6) on the narrative portion of the Strategy document. The LATT will provide the Strategy document for a first reading in May. The Strategy is designed to respond to the GAO report to ensure that the lands needed to accomplish the goals are identified and acquired. The Working Group guidance on the Strategy is to focus on acquisition efforts for lands where there is a federal or joint interest with an emphasis on acquisition efforts that address Goal 1 (surface water storage reservoirs and ASR facilities) and Goal 2 (habitat protection). Other related land acquisition projects will be included as an appendix. An updated Graham map will be in the appendix. The updated Graham map was not distributed at this meeting due to some issues in the Dry Tortugas.

The Florida Natural Areas Inventory (FNAI), FDEP Division of State Lands and the Department of Community Affairs have provided support and participation to the LATT in preparing the Strategy. The LATT members will review the draft and provide comments and the rough draft will be circulated to any interested members of the Working Group for review. In mid-April, the LATT will hold a meeting to receive comments on the revised draft from interested parties and Working Group members. COL May asked about including information about lands without a federal interest i.e. ECP lands. Jim Muller replied that the gray areas on the map are the background information to provide context to illustrate land purchases and will be explained in the text.

John Outland introduced Sally Jue to present the draft map. She reviewed CERP projects on the map that are either numbered or labeled by name. The level column on the CERP table reflects the level of certainty on the boundary for the CERP projects. Carl Goodwin asked whether there was an area identified for the three Lake Okeechobee ASRs. Sally explained that because the lands needed for the wells will be small the decision was made not to band the whole lake. No boundary has yet been identified for the Lake Worth Lagoon and Florida Keys tidal projects. The draft map needs boundaries for the Hobe Sound and Loxahatchee National Wildlife Refuges and also reflects the Big Cypress and ENP additions. The pink crosshatched sections are SOR or Florida Forever projects with CERP projects being outlined. Existing conservation lands are light gray and are to be used to provide context for federal or state/federal land purchases. The gray area includes all conservation lands in the FNAI database that includes federal, state and local lands. The draft map also labels tribal lands. Rick Smith clarified that the boundaries in the Keys also include submerged lands, which makes it hard to pick out the islands on the maps. FNAI has done a

wonderful job in converting the data to a map format. Fred Rapach asked for clarification on Acme Basin B, particularly the Strazzulla tract and STA 1-E and noted the WMD will review those boundaries. Because the footprint for Acme is being designed now, it was decided that the number will be retained but the boundary will not be specified at this time. The boundary of the 8.5-square mile area also needs to be altered to reflect the correct boundary. Beth Carlson said the Grassy Island Farm property is designated to become a STA and several folks have stated that these uplands need to be protected. It is important that we adhere to the purposes for the land acquisition. Wayne Daltry thanked the team for this picture and the assistance this will provide in answering the question on whether we are acquiring the right lands for habitat protection and ecosystem restoration, recognizing this will need to be updated. The goal is to update the information quarterly and to capture local lands. Wayne said he would like a presentation on the area of high demand from the WMD so that we have a picture of what lands are needed to address the needs of the built environment. **Follow-up: Interested Working Group members are to contact the LATT for a copy of the draft Strategy and provide comments by March 14.**

Noxious Exotic Weed Task Team Update

Bob Doren provided an update on behalf of the team, stating that exotics need to be dealt with even if all the land gets acquired and all the water projects are completed. These species will affect the rate of water evaporation, cost more management money, impact water quality and raise questions about invasive water body biochemical pollution i.e. do you need a permit to transport a plant from one water body to another. These species will alter function such as fire ecology. It is a serious problem, which needs to be acknowledged. He presented information on the status of the Strategic Plan for managing Florida's invasive exotic plants and announced the Assessment Plan would be ready the following week. The Implementation Plan will be more difficult since the team will have to identify all the tasks needed to implement the plan. The NEWTT list of prioritized invasive plant species (Encl. 7) categorizing species in groups ranked by ecosystems in south Florida. The research matrix (Encl. 8) is the team's effort to determine the top ten species that exotic control efforts should focus on. The goal is to identify the top 10-20 plants to order to identify management goals for inclusion in the Strategic Plan. The team will host a series of workshops (Encl. 9) as part of implementing the strategic plan. These will be designed to assist in identifying the invasive species and the methods of identifying, detecting, locating, measuring and determining effectiveness of control measures bring together experts in the field in remote sensing, land use and build a data base with 4-5 approaches to detect species and control methodology. In concert with FIU and the University of Miami, NEWTT is hosting the Seventh Annual Conference on Alien Invasion in November 2002. NEWTT will have workshop at this international gathering on the identification and methodology developed from the series of workshops. Roberto Torres of TNC is putting together a communication piece for managers, policy makers and the public to cover the broad issues of invasive management. Fred Rapach asked what impact this information might have on the CERP performance measures. Bob responded that if a performance measure is developed to decrease Melaleuca, but another invasive species likes that hydrologic regime then the strategy must be regional and deal with the entire landscape and deal with a broad spectrum of management options. CERP is altering the landscape in many ways and the strategy to deal with this problem must be comprehensive.

Invasive Exotic Animals

Bob Doren presented a draft directive (Encl. 10) to form a team to develop a plan for these species. There is a need for a plan to deal with invasive exotic animals at the SCT level. This will be a very difficult challenge because the problem of dealing with animals will be different. COL May asked the Working Group members to read the directive. **Follow-up: The Invasive Exotic Animal Assessment and Strategy/Draft NEATT Directive will be discussed at the next meeting.**

Public Comment

None

Meeting adjourned at 5:50 P.M.

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COL May convened the meeting at 8:45 P.M and recognized Brenda Menendez from DCA. Wayne Daltry and Joe Walsh moved approval of the December and January minutes (Encl. 11a and 11b), which were approved by the Working Group.

Strategic Plan Update

Rock Salt introduced the draft 2002 Strategic Plan (Encl. 12a) emphasizing it is a work in progress. With a new Task Force and many new members there is a need to familiarize them with the plan so they can provide guidance to the Working Group at this stage in the draft. It may be presented to the Task Force as a draft for their review. Rock Salt explained the Working Group published the first Strategic Plan: “Success in the Making” which was reviewed by GAO, who stated that it was not strategic nor was it a plan. Further, GAO observed that there was no provision for dispute resolution. Based on GAO’s analysis, the Task Force directed the Working Group to come up with a plan that addressed those concerns. Coordinating Success was sent to Congress in July 2000. GAO reviewed the plan about a year ago and determined that two areas still needed attention: Goal 3 and the linkages between the projects and the outcomes. With this guidance and the need to update the July 2000 Strategic Plan, the Working Group created a Strategic Plan Team with Billy Causey and John Folks as chairs and Linda Friar as staff.

Terry Rice said that it the responsibility of the Working Group members to make sure that their representative on the Task Force understands what the document is. Linda Friar made a power point presentation (Encl. 12b) and asked for comments by March 12. Terry Rice suggested that comments received by the deadline be incorporated and a revised draft sent to the Task Force for their input only. The Working Group could delegate to Rock Salt and COL May the ability to incorporate non-controversial comments and list other issues as concerns. Linda Friar said that comments received so far could be incorporated by the 18th. Terry Rice observed that if the Strategic Plan needs to be updated every two years, it is more of an operational plan than a strategic plan. COL May said it would be good to set time for an upcoming agenda to review the different documents that are required. Terry expressed concern with the Working Group developing its own performance measures and it is not appropriate. RECOVER recognizes that a public process is needed to formulate the performance measures for CERP. Rick Smith also said that to the extent this document reflects acquiring in-holdings in the Big Cypress reserve, private property owners have expressed concern to his office about their lands in the reserve and lack of access. Julio Fanjul asked if the Working Group wanted to take the Strategic Plan to the WRAC. Rock Salt said the Task Force should make that decision. Julio Fanjul made a motion to incorporate comments received by the 12th into the draft presented to the Task Force. Joan Lawrence seconded motion. Anything controversial and not incorporated will be expressed as a concern that is still being worked on at the Working Group level.

Rock Salt asked for clarification on concerns expressed on sub Goal 3-D “Achieve Economic Equity and Environmental Justice”. Joan Lawrence said that this should not be a goal but a guiding principal. Peter Ortnier said NOAA never felt comfortable about the section on water quality. If you read it, you get the sense that the only thing we are concerned about it phosphorus. The Strategic Plan is not consistent with the RECOVER Water Quality plan. This is a CERP effort with broader applications in ecosystem restoration. CERP includes a Water Quality element—there is a new plan with a broader footprint than CERP. He said that while we say we recognize that nitrogen is a problem in the submerged marine environment, this is not evident if you look at the draft plan. There is no discussion of endosulfates from the South Dade area. COL May pointed out that the Corps is proceeding with the Water Quality Feasibility report authorized as part of CERP.

Task Force Meeting Follow-up

Rock Salt reviewed the January Task Force meeting minutes (Encl. 13) and noted the second half of the meeting was dedicated to a discussion of Programmatic Regulations. The group asked that briefings on the dispute resolution protocol, the assessment of exotic plants and the Strategic Plan be presented at future meetings. Invasive Exotics was recognized as an under-funded area and the Task Force asked for a priority list from NEWTT. The Water Resources Advisory Committee (WRAC) was designated as an advisory body to the Task Force.

Fred asked about the relationship between the Working Group and the WRAC. Rock Salt explained that the Task Force is still working out the relationship between themselves and the Working Group. The WRAC does afford an excellent opportunity for input on issues. It was clarified that Julio Fanjul can make motions but cannot vote as he is an advisor to the WRAC.

Rock presented the proposed Voting Protocol (Encl. 14) patterned after rules for the Working Group. Wayne Daltry noted the danger that controversy will never be brought forward and there will no be progress. Ronnie Best returned to the idea of majority rules with a minority opinion. He cited that the minority opinion in the Supreme Court could lead to a later majority opinion. Rock will discuss this concern with the Task Force. Rock noted Vice Chair Mike Collins raised the issue of the SCT at the December briefing. Mike Collins asked for clarification on the relationship of these entities with regard to the Task Force's role in coordinating science and research. Ann Klee asked Rock to prepare a concept paper (Encl. 15). The Task Force suggested the CROGEE be sunsetted at its February meeting. Ann Klee questioned the need for two science groups engaged in independent efforts. Ms. Klee proposed to recreate the science oversight group under the guidance of WRDA 2000. Maureen Finnerty asked if it was conceivable for the CROGEE and SCT to merge. Rock responded no, the CROGEE would be morphed into this new independent science review group but the question is what the Task Force wants for science input. When Congress created the Task Force, they created the science sub group to provide a system-wide function and serves as an independent body. The goal was to create an oversight body that served both the over all system and the CERP. If merged by the Task Force, then it becomes an advisory body for CERP. Mr. Best said the question is if we can reconstitute CROGEE with a larger mission that envisioned in WRDA 2000.

Peter Ortner said that the mission of the Task Force is ecosystem restoration with CERP as a sub-set of that mission. One project has a budget of \$8 billion and one has a budget of \$14 billion. The CROGEE was created with Interior money with the mission to advise the Task Force. CROGEE has addressed more than CERP in assessing whether decisions have a scientific underpinning. Since the CROGEE contract must be redrafted, the contract should be crafted with a broader mission. The SCT discusses other large issues that affect restoration like NEWTT. His vision is for the SCT to provide peer review of RECOVER products. Fred Rapach said if the SCT can be organized so that it could do peer review, there is a chance to make efficiency improvements. Ronnie Best replied that the difficulty is that RECOVER is a funded effort staffed by paid representatives from the various agencies while the SCT isn't paid and has a different function. CROGEE was put in place to do peer review of science in restoration. Peter Ortner stated that there is still is no peer review for RECOVER products. Ronnie Best replied that the SCT is committed to facilitate and organize peer review. Joe Walsh pointed out that RECOVER comes up with performance measures but there is no peer review by SCT or CROGEE at this time. He said RECOVER also holds workshops to refine their understanding of the best science. Rock said the Task Force would discuss the white paper at its meeting and provide guidance to the Working Group. **Follow-up: Working Group members should review the concept paper and provide comments to Rock Salt by March 8.**

The 2002 Workplan and Action/Issue Tracking Chart (Encl. 16 and 17) were provided. These documents are used to track Working Group progress and assists in setting the meeting agendas. Rock said that the CROGEE discussion complicates that action item. He also explained that of the four action items from the lessons learned exercise held two years ago, only one is rated red: "review expectations and needs, review commitments...to assure adequate levels of engagement and support". The conflict resolution, science coordination and voting protocol are on the agenda for discussion at the Task Force meeting. Thaddeus Hamilton asked that tasks dealing with outreach get delegated to the OEEECT for input. Rock explained there would be a review of all the teams by the Task Force. Rock asked for a response to the staff

recommendation on the two groups that that are to be sunsetted (Goal 3 and Sustainable Agriculture Task Teams). Ronnie Best responded that the SCT has an active group looking at the Agriculture workshop held two years ago and recommendations will come back to the Sustainable Agriculture Task Team. Rick Smith made a motion for the Goal 3 team to be sunsetted. COL May suggested that the steering committee review the revised Strategic Plan and have a final meeting. Rick withdrew his motion. There was discussion of the Information Management Team. Kevin Burger reported that the team has not met in a couple of years but will be needed to work to figure out CERP zone.

Rock Salt mentioned he was impressed by the amount of follow up work generated by the Working Group's Lake Okeechobee Issue Team and asked if this team should be regenerated. Richard Harvey suggested that prior to reconstituting the team, the Working Group get a briefing on the ongoing efforts. Fred Rapach suggested a briefing on the Adaptive Management Protocols for Lake Okeechobee being developed by the SFWMD. Rick Smith and David Legg said there are several agencies working together as part of the implementation of the Lake Okeechobee Protection Act. **Follow-up: Lake Okeechobee briefing to be scheduled at a future meeting.**

Preparation for the Task Force Meeting

Rock Salt noted the primary purpose of the March 21st meeting is to continue discussion of Programmatic Regulations. The Task Force is engaging at a policy level on the regulations. The tribes have suggested the regulations include a role for the Task Force while other stakeholders maintain the Task Force has all the authority it needs. The statute that created the Task Force provided a role to advise the Secretary of the Army on the Restudy and it further has the duty to coordinate the efforts of ecosystem restoration that are broader than CERP. Fred Rapach asked if the Task Force could approve the performance measures that RECOVER would develop. Rock said there are legal questions regarding the Secretary of the Army's delegation of authority to another body and this would be discussed. COL May said the Task Force could review and recommend. The Miccosukee Tribe's comments on the initial draft said that the Task Force should approve and adopt the interim goals and performance measures as well as receive and review all RECOVER recommendations. COL May said that the corps has to brief OMB and request a compressed 30-day review. Terry Rice observed that it doesn't seem like a very efficient use of the Task Force's time if they won't be looking at a revised draft. COL May said the baseline and reservation process are still issues that need to be discussed and the December draft is the appropriate vehicle for that discussion. Terry Rice asked if Mr. Parker has seen the most recent draft, and if so, are other Task Force members going to see that draft. COL May said that the question of whether the Corps can release a copy of the most recent draft will be a topic of the meeting with OMB.

Rock Salt said the Task Force sent a letter to OMB supporting the compressed 30-day timeline for review. Ann Klee wants a discussion at the Task Force level to form a position on the role on the Task Force. Beth Carlson suggested the group spend their time on those stakeholder issues the Corps has been unable to resolve. Peter Ortner suggested perhaps the Task Force could receive an analysis of the regulations identifying where changes have been made to address concerns and areas where more guidance/discussion is needed. Rock said that if OMB does not give the corps relief from the 90-day review period, perhaps portions of the current draft could be released to help shape our conversations. The current schedule is to provide the draft to OMB by April 1. Rock reported that Ms. Klee wants to introduce a structural discussion on issues at the end of the meeting after the Programmatic Regulations discussion as well as discuss the Multi-Species Recovery effort. Terry Rice asked whether the issue of performance measures in the regulations has been settled. The response was no.

Proposed Schedule Change for next Working Group Meeting

Rock Salt stated a one-day meeting is planned for May 1st and it will dovetail with the WRAC meeting on May 2. The PMT will meet on the afternoon of April 30.

Legislative Update

Rick Smith provided an update on proposed state legislation of interest to the Working Group. Two bills to provide a dedicated funding source for the state's share (\$100 million over 10 years) of Everglades restoration are moving. The bills would authorize the state to issue up to \$100 million in bonds each year to buy land. HB 813 sponsored by Representative Paula Dockery has passed. The Senate is considering a

similar bill, SB 684 sponsored by Senators Jim King and Ken Pruitt. The Governor has a synthesis proposal based on pay as you go with doc stamp monies and surety bonds linked to the interest in the Florida Forever fund. Up to \$125 million can be allocated from the state in any one year if the DEP and SFWMD can justify the need. Last year \$75 million was taken out of Florida Forever to fund the state's share, which runs counter one of the Governor's principles for the Everglades restoration program not to take monies from other environmental programs to pay for Everglades restoration.

SB 678 (Pruitt) and HB 879 (Pratt and Attkisson) addresses pollution prevention in Lake Okeechobee by giving funding priority to clean up projects north of the lake for public-private partnerships. The bills require all waste residuals deposited on the land be in compliance with the SFWMD Works of the District rule by 2003 and for septage, 2005. HB 569 and SB 1182 require local governments to consider the water management district's regional water supply plans in any comp plan changes and requires local governments to write a water supply plan for potable water. Reuse feasibility studies must be developed in this process. Local governments view this as an unfunded mandate. The intent is to link land and water use planning.

HB 1299 (Machek) bill is moving to change the definition of a "water resource development" project. Senator Latvala has a bill moving on land acquisition. Two solid waste management bills are moving that would reduce the amount of funding for recycling, but the goal of 30% reduction of the waste stream is preserved. HB 819 and 270 would change the standard for citizen's standing in administrative challenges to Water Management or DEP permitting decisions. Many of the environmental groups are against these bills. The proposed changes would limit Governor and Cabinet review of WMD section 370, F.S. decisions. A bill sponsored by Representative Sorenson would take North Key Largo wastewater management from the FKAA and move it to a special taxing district. In addition, there are desalination citing bill and two Broward County bills dealing with special drainage districts. HB 1025 would require all drainage districts to renew their surface water permits every 5 years. Patti Webster explained that the C-11 basin is the focus of this bill as this basin drains into the Everglades.

WRAC Update

Julio Fanjul reported that the WRAC subcommittee on Programmatic Regulation has met with Stu Appelbaum twice. There may another be a subcommittee meeting this month on interim goals. As a result of the meeting in Okeechobee there will be a WRAC sub-committee meeting on Lake Okeechobee management issues and a Lake Okeechobee Issue Committee. WRAC will have a Reservations Workshop in May. The June 6 WRAC meeting conflicts with the June 6 & 7 Task Force meeting in the Keys, however, this conflict may create some opportunities for exchange between both groups.

Public Comment

None

Open Discussion

Rick Smith said the Big Cypress issue is very important to many stakeholders and that accurate information must be reflected in the Strategic Plan and the Land Acquisition Strategy. Maureen Finnerty said it is important to have the superintendent for this discussion and we need to present the facts. John Outland said this may not be a Working Group issue.

COL May initiated a discussion of agenda formation for future meetings. Rock Salt explained the action list resulting from each meeting as well as the action/issues list is used to determine what is ready for discussion at the next meeting. COL May said there is still confusion about role of CERP, Strategic Plan, Regional Teams and the role of science and there is a need to achieve a common picture of what is trying to be achieved. He suggested a Working Group/Task Force 101 session at the next meeting to develop a common understanding of how everything fits together and a common vision of what needs to be achieved. Rock Salt volunteered a 5-minute presentation on the Task Force/Working Group structure. He explained that the common vision comes from the Strategic Plan and encouraged everyone to review it. Peter Ortnier said he liked the State Water Law discussion and thought this type of discussion was a good way to brief the Working Group on issues affecting ecosystem restoration. He proposed a substantive discussion on water quality at the next meeting. Ronnie Best said that the SCT took on the water quality issue as one of

its five major issues. The SCT presentation was to be scheduled for July and stated that a discussion at the Working Group level would guide that July presentation.

Review of the Working Group Requests/Follow-up Action Items

- Working Group/Task Force 101 session at the May meeting. Session should include discussion on the legal requirements for reports from the Task Force and proper linkage of those reports
- A discussion on water quality by SFWMD, DEP, USACE and USEPA with a focus on CERP's contribution and the definition of pollution under the CWA
- LATT to circulate draft Land Acquisition Strategy to interested Working Group members, comments due by March 14
- A discussion on the role of the Task Force in Programmatic Regulations is planned for the next meeting
- The noxious animal plan needs to be discussed at the next meeting and should be scheduled earlier in the day
- Working Group comments on the Strategic Plan due to Linda Friar by March 12
- Comments on the Science concept paper are due to Rock Salt by March 7th
- A future briefing is needed on the adaptive management protocol for managing Lake Okeechobee
- OED will circulate the May 2 WRAC agenda to Working Group members
- Rick Smith will provide the Legislative update to OED to forward to the Working Group

Open Discussion

COL May announced that this would be Neal McAliley's last meeting. Neal is leaving DOJ and going into private practice. COL May said that his balanced approach would be missed. He had a unique ability to synthesize the issues. Several members also reflected on their service with Neal in conjunction with the Working Group. Neal thanked the group for their kind words and commented on the unique nature of all the people involved in Everglades restoration as well as the unique nature of the work of the Working Group.

Meeting adjourned 12:30 P.M.

Enclosures:

1. Agenda
2. Power Point Presentation of Corps Update
3. Programmatic Regulations Power Point Presentation
4. Power Point Presentation on Florida Water Law
5. White Paper on Florida Water Law
6. LATT Power Point Presentation
7. NEWTT prioritized invasive plant species
8. NEWTT Research Matrix
9. NEWTT workshop prospectus
10. Draft NEAT Directive
11. Draft Meeting Minutes
 - a. December 2001
 - b. January 2002
12. Draft Strategic Plan
 - a. February 2002 Draft
 - b. Power Point Presentation
13. Draft Task Force Voting Protocol
14. Science Coordination Team Concept Paper
15. Working Group 2002 Workplan
16. Action/Issue Tracking Chart
17. Issue/Special Team Tracking Chart